

Disposition of the Independent Review Panel



Complainant: NAACP/Collier

IRP Case: A2006.146

Date: November 20, 2008

MDPD Case: SI 2006-0138

The Independent Review Panel met on November 20, 2008 for the purpose of publicly reviewing the complaint made by the NAACP against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendations

1. That MDPD provide an explanation for the 8 minute discrepancy in the time documented in the Vehicle Pursuit Report for the initiation of the pursuit (2033-8:33 pm) and the time when communications was contacted (2041-8:41 pm).

Lt. Chris Carothers provided the explanation at the November 20, 2008 Panel meeting. The communications time was taken from a recording of the discussions that occurred car-to-car during the chase, with a voice-over announcing the time. Lt. Carothers said the source the technician used to document the time is unknown. The technician makes a cassette recording of the car-to-car audio and adds the time as he is recording. Although the clock times are not consistent, the duration of the pursuit is the same in the Vehicle Pursuit Report and the audio recording.

2. That MDPD address the fact that Officer Brian Pfeiffer, a RID officer, violated MDPD policy when he carried his personal Heckler & Koch pistol on April 29, 2006, because he had not qualified with that weapon since November 15, 1999, more than 5 years earlier. MDPD policy requires annual qualification.

Major James O'Donnell addressed the violation at the November 20, 2008 Panel meeting. Major O'Donnell stated that Officer Pfeiffer was clearly in violation of MDPD policy. Major O'Donnell acknowledged that he was the chairperson of the MDPD Disposition Panel and accepted responsibility for the failure to address the violation in the MDPD disposition. Officer Pfeiffer was verbally counseled after Major O'Donnell became aware of the violation through the IRP report.

B. Incident

On Saturday, April 29, 2006, Hammocks District Officers Brian Pfeiffer and Robert Love were working an overtime RID detail. As the officers drove by a gas station in an unmarked unit, Javaris Collier drove out, almost hitting the officers. Then Mr. Collier ran a red light. The officers, suspecting that a robbery had occurred at the gas station, followed Mr. Collier and conducted a traffic stop. When Officer Love

approached the driver's side of Mr. Collier's vehicle on foot, Mr. Collier drove away. The officers continued to follow Mr. Collier as he entered the Villages of Naranja Apartment complex where he lost control of his vehicle and crashed into a light pole. Officer Pfeiffer exited the passenger side of the police vehicle with his firearm drawn. Mr. Collier opened the driver's side door of his vehicle and exited the vehicle in a low crouch stance, with his right hand near his waistband. Officer Pfeiffer, believing that Mr. Collier was armed, fired striking Mr. Collier in the upper left shoulder. Mr. Collier fled on foot within the apartment complex where he was subsequently apprehended by Officer Love, who utilized a taser to control him.

C. Findings of Fact

1. The officers' decision to detain Javaris Collier was based on the officers' belief that Mr. Collier might have been involved in a suspicious incident at the gas station. The officers were working a robbery detail in a target area. Officer Pfeiffer stated that Mr. Collier "left the Sunoco gas station at a high rate of speed. He had no regard... for anybody's safety... So, our belief was that something occurred at that gas station."
2. The officers did not attempt to determine if a robbery or other incident had occurred at the gas station by asking if there had been a 911 call or other report of an incident.
3. Mr. Collier was not involved in any incident at the gas station.
4. The Shooting Investigation file documents that Mr. Collier stated he was trying to get home because he did not have a driver's license, he did not want his vehicle impounded and he was out on bond.
5. The Shooting Investigation file documents that Mr. Colliers stated he knew it was a police vehicle attempting to stop him.
6. Javaris Collier was not carrying a weapon.
7. Officer Brian Pfeiffer shot Mr. Colliers with his Secondary Firearm, 40 S&W Heckler & Koch pistol, model USP Compact, serial number 26-017208, on **April 29, 2006**. Officer Pfeiffer's Qualification Records indicate the following:

	Primary Firearm	Secondary Firearm
Incident Date		
Date Qualified	8/9/2005	11/15/1999
Make	H&K	H&K
Model	USP	USP
Caliber	45	40
Barrel Length	5 inch	4 inch
Serial No.	25-036818	26-017208

7. The Vehicle Pursuit Report indicates that the posted speed was 40 mph and the officers' maximum speed was 50 mph.
8. The Vehicle Pursuit Report indicates that the pursuit was initiated at 2033 hrs (8:33 pm) and concluded at 2036 hrs (8:36 pm), a total of 3 minutes.
9. The Taser Usage Report documents the taser usage at 2038 hrs.
10. The Arrest Affidavit indicates Javaris Collier was arrested at 20:38.
11. The communications tape indicates that Officer Pfeiffer advised at 2041 hrs (8:41 pm) that Mr. Collier's vehicle was refusing to stop and that the driver had thrown an unknown object out of his window.

D. Panel Findings

1. There is an 8 minute discrepancy in the time documented in the Vehicle Pursuit Report for the initiation of the pursuit (2033/8:33) and the time when communications was contacted (2041/8:41). MDPD policy requires that the Primary Pursuit Unit "Immediately notify the Communications Bureau that a pursuit is underway by advising pursuit."
2. The Panel found no evidence of racial profiling.
3. Officer Brian Pfeiffer, a RID officer, violated MDPD policy when he carried his personal Heckler & Koch pistol, serial number 26-017208 on April 29, 2006. Annual qualification is required. Officer Pfeiffer had not qualified with the weapon he used to shoot Javaris Collier since November 15, 1999, more than 5 years earlier

The "Additional Information" section, item #4, of Shooting Investigation file 2006-0138 states that: "Officer Pfeiffer shot the victim with his personally owned.40 Caliber Heckler & Koch pistol, serial #26-017208, which he qualified with on November 15, 1999. A review of Officer Pfeiffer's Firearms qualification Records revealed no additional qualification dates with that particular firearm..."

Firearm Proficiency policy requires that:

Certified weapons instructors will ensure that sworn personnel demonstrate proficiency annually with the approved firearm they carry. (Departmental Manual Chapter 31 Section 5I Proficiency)

Only firearms (handgun, shotgun, rifle), which officers are currently qualified and departmentally approved to carry will be utilized during RID operations. (Robbery Intervention Detail SOP; D.10.d Firearms)

Personnel who demonstrate proficiency with an approved revolver will be considered proficient with any approved revolver of the same manufacturer, caliber, barrel length, frame size, and method of operation. (Departmental Manual Chapter 31 Section 5I Proficiency A.1)

4. Although the firearm qualification policy violation was clearly a part of the Shooting Investigation file, the MDPD Disposition Panel, comprised of Major Thomas Gross, Chief Karen Montejo and Major James O'Donnell, did not address the violation at the time they wrote the disposition.
5. Officer Robert Love complied with MDPD policy when he used his Electronic Control Device (ECD) to stun Mr. Collier.

Officer Love chased Mr. Collier on foot, after Officer Pfeiffer yelled "gun, gun," causing Officer Love to believe Mr. Collier was armed. Mr. Collier ran toward an apartment building where people were gathered. Mr. Collier fell to the ground after he was tasered, but attempted to get up while Officer Love was on his back. As a result, Officer Love then used the ECD on "drive stun" and touched him with the taser, causing a second shock.

6. The MDPD Disposition Panel, on receipt of IRP Finding #4, took it upon itself to informally counsel Officer Brian Pfeiffer. The Weaver Act, which requires that an administrative investigation be completed within 180 days after notice of the allegation for disciplinary action to be taken against the officer, precluded written disciplinary action.

The Independent Review Panel concluded the complaint on November 20, 2008.

Independent Review Panel

Committee Recommendation to the Panel

November 20, 2008

Complaint: A2006.146

MDPD Case: S.I. 2006-0138

Complainant: NAACP/Collier

Aggrieved: Javaris Collier

Accused Parties: Miami-Dade Police Department (MDPD): Officers Brian Pfeiffer and Robert Love.

Materials Reviewed: Correspondence, MDPD Case S.I. 2006-0138, staff notes and committee notes.

Committee: Ms. Julia Dawson and Dr. Tangier Scott, Panel Members; Dr. Eduardo Diaz, Executive Director, Carol Boersma, Executive Assistant; Anna Sidan, Conflict Resolution Specialist.

Meeting Date: October 8, 2008

Present from MDPD Professional Compliance Bureau: Lt. Chris Carothers, Sgt. Archie Moore, Sgt. Fernand Charles, Sgt. Matthew Fryer, Sgt. Viron Adams

Complainant: Dr. Brad Brown NAACP; Judith and Joseph Smith, Javaris Collier's parents

Complaint: Javaris Andre Collier was shot by Officer Brian Pfeiffer on April 29, 2006. Dr. Brad Brown, Political Action Chair for the Miami-Dade NAACP, requested that the Independent Review Panel examine the shooting investigation. Dr. Brown stated that the NAACP was concerned about the police chase in an unmarked vehicle when other alternatives such as uniform backup might have been used instead. The NAACP was also concerned that shots were fired in an area where children were playing.

Incident: The MDPD file describes the incident as follows: On Saturday, April 29, 2006, Hammocks District Officers Brian Pfeiffer and Robert Love were working an overtime RID detail. The officers were riding an unmarked unit. The officers were driving by a gas station when Javaris Collier drove out, almost hitting the officers. Then Mr. Collier ran a red light. The officers, suspecting that a robbery had occurred at the gas station, followed Mr. Collier. The unmarked police vehicle lights and siren were activated and officers conducted a traffic stop. When Officer Love approached the driver's side of Mr.

Collier's vehicle and identified himself as a police officer, Mr. Collier abruptly turned the wheels of his vehicle and drove away. The officers continued to follow Mr. Collier as he entered the Villages of Naranja Apartment complex where he lost control of his vehicle and crashed into a light pole. Officer Love attempted to restrict Mr. Collier's movement by placing the front bumper of the police vehicle close to the driver's door. Officer Pfeiffer exited the passenger side of the police vehicle with his firearm drawn. As Officer Pfeiffer approached Mr. Collier's vehicle, Mr. Collier abruptly opened the driver's side door of his vehicle and exited the vehicle in a low crouch stance, with his right hand near his waistband. Mr. Collier's hand appeared to be wrapped around a shiny object. Officer Pfeiffer, believing that Mr. Collier was armed, fired striking Mr. Collier in the upper left shoulder. Although Mr. Collier was injured he fled on foot within the apartment complex where he was subsequently apprehended by Officer Love, who utilized a taser to control him.

Mr. Collier was charged with (1) Aggravated Assault, (2) Fleeing and Eluding a Law Enforcement Officer, (3) Resisting Arrest without Violence, (4) Possession of Marijuana and (5) No Valid Driver License. He was convicted on charges 1-4.

Department Response SI 2006-0138: Contact shooting by Officer Brian Pfeiffer.

The following is the MDPD Disposition:

Exonerated. There is neither evidentiary information nor witness statements to dispute Officers Love's and Pfeiffer's sworn statement account of this incident. There is sufficient evidence to indicate that Officer Pfeiffer discharged his weapon consistent with the Department's Use of Deadly Force and Weapons Policy, and that he acted in a reasonable and justified manner. Further, a review of State Attorney Katherine Fernandez Rundle's Closeout letter to Director Robert Parker, dated January 8, 2008, revealed that her office determined that the police shooting of Mr. Collier by Officer Pfeiffer was a legally justified use of force, and no criminal charges would be filed.

Officer Pfeiffer stated that the abrupt manner in which Mr. Collier's vehicle entered traffic made him believe that the vehicle might be involved in a suspicious incident at the gas station. As a result he and Officer Love activated their police lights and attempted a traffic stop. As he and Officer Love approached Mr. Collier's vehicle on foot, Mr. Collier accelerated and nearly hit Officer Love. He and Officer Love followed Mr. Collier as he drove into the Villages of Naranja apartment complex where Mr. Collier lost control and hit a light pole. Officer Pfeiffer exited the vehicle on the passenger's side with his gun drawn. When Mr. Collier began to exit his vehicle, Mr. Collier's hand appeared to be clenched around a shiny object. Officer Pfeiffer yelled, "Gun, Gun" and then fired one shot. Mr. Collier fell back momentarily and then ran toward the apartments.

Officer Love stated that, after Mr. Collier hit the light pole, he positioned the unmarked police vehicle near Mr. Collier's door in an effort to contain him. Officer Love indicated

that he heard Officer Pfeiffer, who had exited the police vehicle before him, yell, "Gun, Gun," then he heard a single gunshot. At that time he did not know who fired the shot. After the shot was fired, Mr. Collier ran in front of the unmarked police vehicle. The officers pursued him. Officer Love deployed his taser when he was about 4-5 feet behind Mr. Collier. Mr. Collier fell to the ground and Officer Love got on his back, however Mr. Collier struggled to get up. Officer Love then removed the cartridge from the taser gun and used "drive stun," which means shocking the subject by touching him with the taser. Then he was able to handcuff Mr. Collier with the help of another officer.

Taser Usage Report The prongs hit Mr. Collier in the back of the head and the left shoulder blade. Mr. Collier complied after two trigger pulls.

Javaris Collier provided a statement to Homicide Detective James McColman the night of the shooting, while he was at Jackson Memorial Hospital. Det. McColman said he read Mr. Collier his Miranda Rights and Mr. Collier agreed to speak without a lawyer. Mr. Collier stated he was trying to get home because he did not have a driver's license, he did not want his vehicle impounded and he was out on bond. He knew it was a police vehicle attempting to stop him. He circled the apartment complex twice and was then bumped by a police car, causing him to hit a pole. (The police investigation found no physical evidence of his vehicle being hit.) He jumped out of the car, heard a gunshot, and then ran towards his apartment. At first he did not realize he had been shot. He collapsed at which time an officer shot him with a taser gun and took him into custody.

State Attorney's Office Closeout Memo "...the shooting of Javaris Collier, although regrettable, [was] legally justified... Mr. Collier's actions while driving, in addition to his actions at the stop sign where he almost hit Officer Love, heightened the fear of potential violence from this individual, and contributed to the fear in the mind of Officer Pfeiffer that violence was imminent both to himself and the other officer with him after the vehicle finally stopped. As a consequence, he fired in order to protect his own life and the life of his partner based upon the totality of Javaris Collier's actions that night..."

Committee Remarks: Ms. Dawson started the meeting by asking Judith Smith, mother of the victim, what her concerns were. Mrs. Smith replied:

- Why was Javaris stopped?
- Was it racial profiling? Her son has dreds.
- If the police officers felt that they were in danger, why did they not call for back-up before the shooting?
- There were children in the area of the vehicle pursuit and shooting.

Mr. Smith stated that his son was stopped at the light and he did not know who was behind him. He was afraid for his life. Mr. Collier was shot in the back and tased while he was on the ground. His son did not have a weapon.

Dr. Brown stated that a minor incident escalated to a shooting. Mr. Collier was not endangering anyone. The RID officers were acting on what might have happened when

they pursued Mr. Collier, rather than what actually happened. Many people are afraid of unmarked cars. The situation might have been different if there had been marked police vehicles involved.

Dr. Diaz stated that Mr. Collier was arrested by RID (Robbery Intervention Detail) officers. They are proactive officers who drive unmarked cars and primarily focus on robberies. They are taught to react to reasonable suspicion.

Lt. Carothers stated that RID officers are allowed to do things that regular officers are not because they have special advanced training. Lt. Carothers added that the pursuit policy requires the use of lights and sirens, and that marked units are involved as soon as possible, which the officers did. The chase led into a residential area and made a complete circle of the complex.

Dr. Diaz stated that the police file indicated that Officer Pfeiffer used a personal handgun and the last time he qualified with that gun was 1999. The shooting occurred in 2006. He asked about the MDPD policy regarding officer qualification with personal guns. Lt. Carothers replied that MDPD requires officers to qualify every year with whatever gun they use on duty. Lt. Carothers noted that the MDPD disposition Panel did not address this issue.

Committee Follow up: Lt. Carothers met with the lead Homicide Detective and listened to a communications tape of the initial incident. According to the tape, Officer Pfeiffer advised at 2041 hrs that a vehicle was refusing to stop and that the driver had thrown an unknown object out of his window. Lt. Carothers said that other units working the same enforcement detail were immediately advised, including marked police vehicles, and an aviation unit was requested. Approximately 5 minutes passed from the first radio transmission, to the moment that the subject was "in-custody."

MDPD Policies:

Firearm Proficiency

Certified weapons instructors will ensure that sworn personnel demonstrate proficiency annually with the approved firearm they carry. (Departmental Manual Chapter 31 Section 5I Proficiency)

Personnel who demonstrate proficiency with an approved revolver will be considered proficient with any approved revolver of the same manufacturer, caliber, barrel length, frame size, and method of operation. (Departmental Manual Chapter 31 Section 5I Proficiency A.1)

Only firearms (handgun, shotgun, rifle), which officers are currently qualified and departmentally approved to carry will be utilized during RID operations. (Robbery Intervention Detail SOP; D.10.d Firearms)

Pursuit

The officer must reasonably believe that the subject knows he was directed to stop, refuses to stop, and is willfully fleeing in an attempt to avoid capture by using high speed driving or other evasive tactics such as driving off a highway, making sudden or unexpected movements, or driving on the wrong side of the roadway. (Departmental Manual Chapter 30 Section 1.I General)

All personnel participating in RID will adhere to Miami-Dade policies regarding vehicle pursuits. (Robbery Intervention Detail SOP; D.7.a Vehicle Pursuit Reporting)

Only two departmental units are authorized to actively pursue: the primary unit and the support unit. (Departmental Manual Chapter 30-02 I.A.4 General)

Officers may only engage in pursuits when they have a reasonable belief that the fleeing subject has committed or attempted to commit a felony which involves the use or threat of physical force or violence to a person. (Departmental Manual Chapter 30-02 I.B.1 Decision to Pursue)

The decision to initiate pursuit must be based on the pursuing officer's conclusion that the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the subject remain at large. Many factors have a bearing on the officer's decisions to pursue a vehicle or operate in an emergency mode including, but not limited to: (a) Type and speed of vehicle being pursued; (b) Location where pursuit will take place; (c) Traffic conditions; (d) Weather conditions; (e) Road conditions; (f) Time of day or night; (g) Nature of the offense; (h) Condition of police vehicle.... (Departmental Manual Chapter 30-02 I.B.2 Decision to Pursue)

Once the decision to pursue has been made, the aforementioned factors shall be given careful consideration in determining the maximum safe speed officers may travel during the pursuit.(Departmental Manual Chapter 30-02 I.B.3 Decision to Pursue)

Immediately notify the Communications Bureau that a pursuit is underway by advising pursuit. (Departmental Manual Chapter 30-02 I.G.1 Primary Pursuit Unit Responsibilities)

Prohibited Tactics: Pursuing in areas with heavy pedestrian traffic; eg. Sidewalks, shopping centers, active school zones. (Departmental Manual Chapter 30-02 I.O.4)

Only under extreme circumstances shall unmarked police vehicles, motorcycles, and other specialized police vehicles designated for highway use and equipped with siren and emergency lights engage in pursuits, and then only until such time as assistance can be obtained from a marked police sedan equipped with operating emergency signal devices. (Departmental Manual Chapter 30-02 I.P.1 Use of Police Vehicles During Pursuit)

This is a tactic of opportunity that may be used during pursuit situations only if the fleeing vehicle has become stationary because it is stalled, stuck, disabled, or

immobilized... The maneuver involves positioning one or more police vehicles in fixed containment positions in front, behind, and/or beside the fleeing vehicle... preventing further movement by the subject vehicle... (Departmental Manual Chapter 30-02 I.T.b Containment Stop Maneuver on Stationary Vehicle)

Electronic Control Devices

Officers should only use that force which is necessary to control and seize an individual for the purpose of taking the person into custody or treatment. ECD use should not exceed an accumulative total of three cycles or deployments, regardless of the number of officers deploying an ECD, unless tactically necessary to seize an individual. (Departmental Manual Chapter 31-01 D.1)

An officer's decision to deploy an ECD on fleeing felons and violent misdemeanants who are subject to arrest should be predicated upon the subject exhibiting active physical resistance. A violent misdemeanor is someone who has inflicted or has threatened to inflict physical harm to another person. (Departmental Manual Chapter 31-01 D.3.a Fleeing Subject)

An officer's decision to deploy the ECD utilizing repetitive cycles shall be predicated upon the following factors: (a) The subject continues to exhibit active physical resistance, and (b) The subject refuses to follow the officer's command to stop resisting, and (c) A tactical method is not feasible or could place the officer in jeopardy. (Departmental Manual Chapter 31-01 D.4. Repetitive cycle/multiple officer deployment)

Findings of Fact:

1. The officers' decision to detain Javaris Collier was based on the officers' belief that Mr. Collier might have been involved in a suspicious incident at the gas station. The officers were working a robbery detail in a target area. Officer Pfeiffer stated that Mr. Collier "left the Sunoco gas station at a high rate of speed. He had no regard... for anybody's safety... So, our belief was that something occurred at that gas station."
2. The officers did not attempt to determine if a robbery or other incident had occurred at the gas station by asking if there had been a 911 call or other report of an incident.
3. Mr. Collier was not involved in any incident at the gas station.
4. The Shooting Investigation file documents that Mr. Collier stated he was trying to get home because he did not have a driver's license, he did not want his vehicle impounded and he was out on bond.
5. The Shooting Investigation file documents that Mr. Colliers stated he knew it was a police vehicle attempting to stop him.

6. Javaris Collier was not carrying a weapon.
7. Officer Brian Pfeiffer shot Mr. Colliers with his Secondary Firearm, 40 S&W Heckler & Koch pistol, model USP Compact, serial number 26-017208, on **April 29, 2006**. Officer Pfeiffer's Qualification Records indicate the following:

	Primary Firearm	Secondary Firearm
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10. The Arrest Affidavit indicates Javaris Collier was arrested at 20:38.
11. The communications tape indicates that Officer Pfeiffer advised at 2041 hrs (8:41 pm) that Mr. Collier's vehicle was refusing to stop and that the driver had thrown an unknown object out of his window.

Committee Findings:

1. There is an 8 minute discrepancy in the time documented in the Vehicle Pursuit Report for the initiation of the pursuit (2033/8:33) and the time when communications was contacted (2041/**8:41**). MDPD policy requires that the Primary Pursuit Unit "Immediately notify the Communications Bureau that a pursuit is underway by advising pursuit."
2. The committee found no evidence of racial profiling.
3. Officer Brian Pfeiffer, a RID officer, violated MDPD policy when he carried his personal Heckler & Koch pistol, serial number 26-017208 on April 29, 2006. Annual qualification is required. Officer Pfeiffer had not qualified with the weapon he used to shoot Javaris Collier since November 15, 1999, more than 5 years earlier

The "Additional Information" section, item #4, of Shooting Investigation file 2006-0138 states that:

Officer Pfeiffer shot the victim with his personally owned .40 Caliber Heckler & Koch pistol, serial #26-017208, which he qualified with on November 15, 1999. A review of Officer Pfeiffer's Firearms qualification Records revealed no additional qualification dates with that particular firearm...

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4. Although the firearm qualification policy violation was clearly a part of the Shooting Investigation file, the MDPD Disposition Panel, comprised of Major Thomas Gross, Chief Karen Montejo and Major James O'Donnell, did not address the violation.
5. Officer Robert Love complied with MDPD policy when he used his Electronic Control Device (ECD) to stun Mr. Collier.

Officer Love chased Mr. Collier on foot, after Officer Pfeiffer yelled "gun, gun," causing Officer Love to believe Mr. Collier was armed. Mr. Collier ran toward an apartment building where people were gathered. Mr. Collier fell to the ground after he was tasered, but attempted to get up while Officer Love was on his back. As a result, Officer Love then used the ECD on "drive stun" and touched him with the taser, causing a second shock.

Recommendations:

1. That MDPD provide an explanation for the 8 minute discrepancy in the time documented in the Vehicle Pursuit Report for the initiation of the pursuit (2033) and the time when communications was contacted (2041).
2. That MDPD address the fact that Officer Brian Pfeiffer, a RID officer, violated MDPD policy when he carried his personal Heckler & Koch pistol, serial number 26-017208 on April 29, 2006. Officer Pfeiffer had not qualified with the weapon he used to shoot Javaris Collier since November 15, 1999, more than 5 years

earlier, and did not comply with MDPD policy that personnel who demonstrate proficiency with an approved revolver will be considered proficient with any approved revolver of the same manufacturer, caliber, barrel length, frame size, and method of operation since his personal weapon was of a different caliber and barrel length.

3. That the Panel reconsider this complaint after MDPD addresses the above recommendations.